

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 26, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Schmidt
Ray Dwyer

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Peggy Pelikan

OTHERS PRESENT: James Priest, BA06:053, owner
Marc Miller, BA06:046, owner
Lee Bleecker, BA06:049, owner
Sandy Scherer, BA06:049, Planning and Zoning Division Staff
Lawrence Babb, BA06:046, petitioner
Jeff Schaf, BA06:052, petitioner
Bob Sokolowicz, BA06:046, neighbor
Ken Herro, BA06:052, petitioner's real estate agent
Todd Whittaker, BA05:081, petitioner
Danielle Zinda of J. Anthony Homes, BA06:053, petitioner
Atty. Debbie Price, BA06:049, Waukesha County Corp. Counsel
James Rose, BA06:049, Land Resources Division Staff
Atty. John Carter, BA06:049, attorney for petitioner
Atty. Matt Scholar, BA06:049, attorney for petitioner
Alice Thompson, BA06:049, wetland delineator for petitioner
Lola Berger, BA06:046, neighbor
Jan Hass, BA06:053, part owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of July 12, 2006.*

The motion was seconded by Mr. Schultz and carried unanimously.

NEW BUSINESS:

BA06:049 LEE M. BLEECKER d.b.a. The Sand Pit, Inc.

Mr. Schmidt I would find as findings of fact that 1) the property is subject to the

Waukesha County Shoreland and Floodland Protection Act and to the Waukesha County Ordinances as delineated on the maps that were presented by the County; there is no evidence to suggest otherwise. There is some testimony and evidence that that might be changed in the future but the counsel for the applicant agreed that we don't have any authority to change that. So, based on the existing maps, I would find that they were comparably subject to Waukesha County Shoreland and Floodland and to the Waukesha County Ordinances. I would also find as a fact that 2) there was cutting of trees and vegetation without a zoning permit. I would find as a fact that 3) there was grading and land-altering activities without a conditional use permit. I would find as a fact that 4) there was parking of trailers and other vehicles in unpermitted areas. Therefore, as conclusions of law, I would find and state that 1) the cease and desist order issued by the County zoning administrator was properly granted, and I would find that 2) the stop work order issued by the Land Resources Division was properly granted and I would find that 3) the petitioner was in violation of the reclamation plan that is presently on file. Therefore, I move that the appeal be denied. I move to make those findings of fact and conclusions of law a motion for this matter.

The motion was seconded by Mr. Dwyer and carried unanimously.

BA06:046 MARC & SANDRA MILLER
Lawrence Babb – Petitioner

Mr. Schmidt

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, and for the reasons stated in the Staff Report with the following modifications to the conditions:

Condition No. 1 shall read as follows: The total floor area ratio on the property shall not exceed 16.98% and the property must maintain a minimum of 10,500 sq. ft. of open space.

Condition No. 4 shall be deleted. The new condition No. 4 shall read as follows: The shed must be removed from the property prior to the issuance of a Zoning Permit.

Condition No. 5 shall be amended to read as follows: The detached garage must be removed from the property prior to the issuance of an occupancy permit for the new residence.

Condition No. 11 shall remain.

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Ward voted no.

The staff's recommendation was for denial of the request for a variance from the floodplain setback requirements of the Ordinance, but approval of the request for variances from the offset, floor area ratio, and open space requirements of the Ordinance, with the following conditions:

1. The total floor area ratio on the property shall not exceed 19.5% and the property must maintain a minimum of 10,500 sq. ft. of open space.

2. The proposed residence and decking must be located at least 75 ft. from the shoreline and the 100-year floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
3. The decking must be a minimum of 5 ft. from the property lines.
4. The Town of Oconomowoc shall be entered into a contract for the installation of sewer for the subject property and evidence of such contract shall be submitted to the Planning and Zoning Division staff prior to the issuance of a Zoning Permit.
5. The shed and detached garage must be removed from the property prior to issuance of a zoning permit for the new residence.
6. The deck on the shoreline must be removed prior to issuance of a zoning permit for the new residence. In addition, a Grading and Restoration Plan for the shoreline area must be submitted to Planning & Zoning Division staff for review and approval prior to issuance of a zoning permit. The area where the shed and deck are removed near the shoreline must be restored with natural vegetation.
7. The southernmost deck near the residence must be removed prior to issuance of a zoning permit for the new residence.
8. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The residence shall be no taller than 36 ft., as measured from the lowest exposed point to the peak of the roof.
9. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the existing residence and verifying that the shed and two decks have been removed from the property and in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also identify the location of the 100-year floodplain on the property.
11. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff. *Note: this condition was deleted when the report was read into the record as it contradicts Condition No. 4.*
12. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for

completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 9.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The residence and decking could be constructed on this property to meet both the floodplain setback and offset requirements of the Ordinance. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The approval of the request for variances from the floor area ratio and open space requirements of the Ordinance, as conditioned, will allow the petitioner to construct a new single-family residence with attached garage and will result in the removal of several extremely nonconforming structures from the property. The offset, floor area ratio, and open space variances are essentially temporary as sewer will be available to this area in the near future, at which time, 19.5% floor area ratio and 10,500 sq. ft. of open space would be allowed. Therefore, the approval of this request, with all recommended conditions, would be in conformance with the purpose and intent of the Ordinance.

BA06:052 JANE KROGSTAD
Jeff & Maureen Schaf – Petitioners

Mr. Bartholomew

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report with the following additional condition:

Condition No. 13 shall be added to read as follows: The total footprint and total square footage of the structure shall be no larger than proposed herein.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence, garage, and any proposed decks or patios must be a minimum of 17 ft. from the conservancy/wetland, and 75 ft. from the shore and 100-year floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed 2 ft. in width. If the overhangs exceed two ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
2. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

3. The existing shed must be removed from the property prior to the issuance of a zoning permit for the proposed residence.
4. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. The proposed residence shall meet the height requirements of the Ordinance i.e., the height of the residence, as measured from the lowest exposed point to the peak of the roof, must not exceed 35 ft.
6. The Wetland Delineation by Natural Landscapes, Inc. must be approved by the Army Corps of Engineers, if applicable, and documentation of such approval must be submitted to the Planning and Zoning Division Staff prior to the issuance of a zoning permit.
7. The Ordinary High Water Mark, as flagged by the WDNR, must be surveyed and a copy of the survey must be submitted to the Planning and Zoning Division staff prior to the issuance of a zoning permit for the new residence.
8. The construction of the residence shall adhere to the recommendations provided in the Analysis by Giles Engineering Associates dated May 24, 2006, unless changes or modifications are reviewed and approved by the Planning and Zoning Division Staff.
9. The first floor of the structure shall be placed two feet above the floodplain elevation (823.1 ft. above mean sea level). The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage.
10. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and decking, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
11. In order to ensure the construction of a new residence does not result in adverse drainage, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 10.
12. Total square footage of the existing and proposed disturbed areas shall be calculated and the total shall be submitted the Planning and Zoning Division staff for review and approval prior to the issuance of a Zoning Permit. It should be noted that no disturbance will be allowed in the wetland areas.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of a new single-family residence with an attached garage on the subject property. The existing residence does not have a garage and does not appear to have been intended for year round use. The proposed residence will be located in approximately the same location as the existing residence. It will meet all of the location requirements of the Ordinance other than wetland setback. If a 75 ft. setback from the wetland is required, there would no available space on the property for a building. The new residence will maintain approximately the same setback from the wetland as the existing residence. Therefore, it is reasonable to grant a variance from the wetland setback requirements of the Ordinance.

The exact amount of disturbance, existing and proposed, on the property is unknown. A detailed grading and drainage plan has not yet been submitted. The property is very large and due to the location of the residence, it requires a very long driveway, which reduces the amount of disturbance allowed for the building site and the mound system. Therefore, it is reasonable to grant a variance from the open space requirements of the Ordinance. As conditioned, all areas of disturbance will be reviewed and approved by the Planning and Zoning Division staff after final house and grading plans have been provided. The approval of this request would not be contrary to the public interest. Therefore, approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA06:053 JAMES PRIEST

J. Anthony Homes – Petitioner

Mr. Schultz *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, and for the reasons stated in the Staff Report with the modifications necessary to allow the lot line modifications as proposed.*

After some discussion, Mr. Schultz withdrew this motion.

Mr. Schultz *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of the request for a variance from the offset requirement but approval of the request for variances from the lot width and lot size for the lot line adjustment and approval of the request for variances from the floor area ratio, road setback, shore and floodplain setback and open space requirements of the Ordinance, with the following conditions:

1. The northwest lot line of Lot 84 (the common lot line between Lot 83 and Lot 84) shall be moved to the northwest only as far as to make the residence on Lot 84 conform with the offset requirements of the Ordinance.
2. The Certified Survey Map will need to be approved by the Town of Oconomowoc and the Waukesha County Planning and Zoning Division Staff, and recorded in the Waukesha County Register of Deeds office for the reconfiguration of the lots. This must be completed prior to the issuance of a Zoning Permit for a new residence on Lot 83.

3. The non-conforming wood deck over the shoreline on Lot 84 shall be removed from the property prior to the approval of the Certified Survey Map by the Waukesha County Planning and Zoning Division Staff.
4. The total floor area ratio on Lot 83 shall not exceed 24% of the lot size.
5. The proposed residence, garage, and any proposed decks or patios must conform with the offset requirements of the Ordinance and must be a minimum of 30 ft. from the shore and floodplain, and 10 ft. from the road right-of-way, as measured to the out edges of the walls, provide the overhangs do not exceed 2 ft. in width. If the overhangs exceed two ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
6. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and any appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 7.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Ordinance provides that the minimum required floor area for a single-family residence is 1,100 sq. ft. As conditioned, a new residence could be constructed on Lot 83 at approximately 1,950 sq. ft. This would allow the construction of a 1,550 sq. ft. residence with a 400 sq. ft. attached garage. Reconfigured as recommended, Lot 83 will have a minimum average width of approximately 94 ft. and a residence could be constructed to meet the required offset of approximately 11 ft. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances from the floor area ratio and open space requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Lot 83 itself has less lot area than the required minimum open space of 10,500 sq. ft., and no structure

could be constructed on the property without a variance from the open space requirement of the Ordinance. Therefore, it is reasonable to grant a variance from the open space requirement. To require that a residence be constructed to comply with the required road, shore and floodplain setback requirements of the Ordinance would limit the depth of the residence to less than 30 ft. The construction of the residence 30 ft. from the shore will keep the residence in line with the adjacent properties. River Road is a dead end road and allowing the residence to be constructed 10 ft. from the road will maximize the setback from the more sensitive shore and floodplain. Therefore, the approval of the request for variances from the road, shore and floodplain setback, and open space requirements, would not be contrary to the public interest. The approval of this request would be in conformance with the purpose and intent of the Ordinance.

The lot lines, as conditioned, will be adjusted only the amount necessary to eliminate the encroachment of the residence on Lot 84 onto Lot 83 and to make the existing residence conform to the offset requirements of the Ordinance. This will ensure that Lot 83 will remain as large as possible for the construction of a new residence. The staff feels that allowing the lot line to be moved any more than the minimum necessary to eliminate the encroachment would not be within the purpose and intent of the Ordinance as it would make the already non-conforming Lot 83 substantially more non-conforming. Therefore, the approval of the request for variances for the lot line adjustment, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:081 TODD WHITTAKER

Mr. Schmidt *I make a motion to reconsider Condition No. 4 of the Board's October 27, 2005, decision regarding BA05:081.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Schmidt *I make a motion to modify the first sentence of Condition No. 4 of the Board's October 27, 2005, decision regarding BA05:081 as follows:*

The first sentence of Condition No. 4 shall read as follows: The depth of the residence (between shore and road) shall not exceed 30 ft. (not including the bay windows) and the footprint shall not exceed 950 sq. ft. in size.

In addition, Condition No. 13 shall be added to read as follows: The bay windows must meet all offsets and setbacks required in the October 27, 2005, Board of Adjustment decision regarding BA05:081.

The motion was seconded by Mr. Schultz and carried unanimously.

ADJOURNMENT:

Mr. Schmidt *I make a motion to adjourn this meeting at 10:10 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Peggy Pelikan
Secretary, Board of Adjustment

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